

SANDERS LAW GROUP

Douglas H. Sanders, Esq.
333 Earle Ovington Boulevard, Suite 402
Uniondale, NY 11553
Tel: (516) 203-7600
Email: csanders@sanderslaw.group
File No.: 125213

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Helayne Seidman,

Plaintiff,

v.

K-100 Radio LLC,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Helayne Seidman (“*Plaintiff*”), by and through her undersigned counsel, for her Complaint against defendant K-100 Radio LLC (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement and the violation of the DMCA for the removal of copyright management information.

1 2. Plaintiff herein provides photojournalism goods and services and owns
2 the rights to these images which Plaintiff licenses to online and print publications.

3
4 3. Defendant owns and operates a website known as k100radio.com (the
5 “Website”).

6 4. Defendant, without permission or authorization from Plaintiff actively
7 copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged
8 in this misconduct knowingly and in violation of the United States copyright laws.
9

10 **PARTIES**

11
12 5. Plaintiff Helayne Seidman is an individual who is a citizen of the State
13 of New York and maintains a principal place of residence at 16 St. Marks Place, Apt.
14 4B, Manhattan in New York City, New York.

15
16 6. Upon information and belief, Defendant K-100 Radio LLC is a Georgia
17 limited liability company with a principal place of business at 113 Cottonbelle Drive,
18 Stockbridge in Henry County, Georgia and is liable and responsible to Plaintiff
19 based on the facts herein alleged.
20

21 **JURISDICTION AND VENUE**

22 7. This Court has subject matter jurisdiction over the federal copyright
23 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.
24

25 8. This Court has personal jurisdiction over K-100 Radio LLC because it
26
27

1 maintains its principal place of business in Georgia.

2 9. Venue is proper under 28 U.S.C. §1391(a)(2) because K-100 Radio
3 LLC does business in this Judicial District and/or because a substantial part of the
4 events or omissions giving rise to the claim occurred in this Judicial District.
5

6 **FACTS COMMON TO ALL CLAIMS**
7

8 10. Plaintiff is a professional photographer by trade who is the legal and
9 rightful owner of the photograph which Plaintiff licenses to online and print
10 publications.
11

12 11. Plaintiff has invested significant time and money in building Plaintiff's
13 photograph portfolio.
14

15 12. Plaintiff has obtained active and valid copyright registrations from the
16 United States Copyright Office (the "*USCO*") which cover many of Plaintiff's
17 photographs while many others are the subject of pending copyright applications.
18

19 13. Plaintiff's photographs are original, creative works in which Plaintiff
20 owns protectable copyright interests.
21

22 14. The Website is a popular and lucrative commercial enterprise.
23

24 15. The Website is monetized in that it solicits donations from the general
25 public and, upon information and belief, Defendant financially benefits from these
26 activities.
27

1 16. The Website is monetized in that it sells merchandise to the public and
2 solicits donations from the public and, upon information and belief, Defendant
3 profits from these activities.
4

5 17. On April 2, 2020, Plaintiff authored a photograph of the Woodhull
6 Medical Center in Brooklyn (the "*Photograph*"). A copy of the Photograph is
7 attached hereto as Exhibit 1.
8

9 18. Plaintiff applied to the USCO to register the Photograph on or about
10 June 30, 2020 under Application No. 1-8980780323.
11

12 19. The Photograph was registered by the USCO on June 30, 2020 under
13 Registration No. VA 2-211-238.
14

15 20. On March 25, 2022, Plaintiff first observed the Photograph on the
16 Website. A copy of the screengrab of the Website including the Photograph is
17 attached hereto as Exhibit 2.
18

19 21. The Photograph was displayed at URL: [https://k100radio.com/elderly-
20 black-woman-killed-over-argument-about-social-distancing/](https://k100radio.com/elderly-black-woman-killed-over-argument-about-social-distancing/).
21

22 22. The Photograph was stored at URL:
23 <https://i0.wp.com/k100radio.com/wp-content/uploads/2020/04/woodhall.jpg>.
24

25 23. Without permission or authorization from Plaintiff, Defendant
26 volitionally selected, copied, stored and/or displayed Plaintiff's copyright protected
27
28

1 Photograph as is set forth in Exhibit “1” on the Website.

2 24. Upon information and belief, the Photograph was copied, stored and
3 displayed without license or permission, thereby infringing on Plaintiff's copyrights
4 (hereinafter the “*Infringement*”).
5

6 25. The Infringement includes a URL (“*Uniform Resource Locator*”) for a
7 fixed tangible medium of expression that was sufficiently permanent or stable to
8 permit it to be communicated for a period of more than a transitory duration and
9 therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v.*
10 *Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).
11

12 26. The Infringement is an exact copy of the entirety and/or vast majority
13 of Plaintiff's original image that was directly copied and stored by Defendant on the
14 Website.
15

16 27. Upon information and belief, Defendant takes an active and pervasive
17 role in the content posted on its Website, including, but not limited to copying,
18 posting, selecting, commenting on and/or displaying images including but not
19 limited to Plaintiff's Photograph.
20

21 28. Upon information and belief, Defendant directly contributes to the
22 content posted on the Website by, inter alia, directly employing reporters, authors
23 and editors as its agents, who post content on the Website under the alias
24
25
26
27
28

1 “K100Radio” (*“Employees”*).

2 29. Upon information and belief, at all material times the Employees were
3 acting within the course and scope of their employment when they posted the
4 Infringement.
5

6 30. Upon information and belief, at all material times the Employees were
7 acting within the course and scope of their agency when they posted the
8 Infringement.
9

10 31. Upon information and belief, the Photograph was willfully and
11 volitionally posted to the Website by Defendant.
12

13 32. Upon information and belief, Defendant is not registered with the
14 United States Copyright Office pursuant to 17 U.S.C. §512.
15

16 33. Upon information and belief, the Infringement was not posted at the
17 direction of a “user” as that term is defined in 17 U.S.C. §512(c).
18

19 34. Upon information and belief, Defendant engaged in the Infringement
20 knowingly and in violation of applicable United States Copyright Laws.

21 35. Upon information and belief, Defendant has the legal right and ability
22 to control and limit the infringing activities on its Website and exercised and/or had
23 the right and ability to exercise such right.
24

25 36. Upon information and belief, Defendant monitors the content on its
26
27
28

Website.

37. Upon information and belief, Defendant has received a financial benefit directly attributable to the Infringement.

38. Upon information and belief, the Infringement increased traffic to the Website and, in turn, caused Defendant to realize an increase in its solicited donations and/or merchandise sales.

39. Upon information and belief, a large number of people have viewed the unlawful copies of the Photograph on the Website.

40. Upon information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

41. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential market for the Photograph.

42. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

43. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

44. The Photograph is an original, creative work in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

1 45. Plaintiff has not licensed Defendant the right to use the Photograph in
2 any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights
3 to Defendant.
4

5 46. Without permission or authorization from Plaintiff and in willful
6 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
7 illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed
8 works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in
9 its copyrights.
10

11 47. Defendant's reproduction of the Photograph and display of the
12 Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v.*
13 *Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).
14

15 48. Plaintiff is informed and believes and thereon alleges that the
16 Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation
17 of Title 17 of the U.S. Code, in that they used, published, communicated, posted,
18 publicized, and otherwise held out to the public for commercial benefit, the original
19 and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by
20 using it in the infringing article on the Website.
21
22

23 49. As a result of Defendant's violations of Title 17 of the U.S. Code,
24 Plaintiff is entitled to an award of actual damages and disgorgement of all of
25
26
27
28

1 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
2 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
3 statutory damages against Defendant for the infringement pursuant to 17 U.S.C. §
4 504(c).

5
6 50. As a result of the Defendant's violations of Title 17 of the U.S. Code,
7 the court in its discretion may allow the recovery of full costs as well as reasonable
8 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

9
10 51. As a result of Defendant's violations of Title 17 of the U.S. Code,
11 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
12 copyright pursuant to 17 U.S.C. § 502.

13
14 **SECOND COUNT**

15 ***(Falsification, Removal and Alteration of Copyright Management***
16 ***Information 17 U.S.C. § 1202)***

17 52. Plaintiff repeats and incorporates, as though fully set forth herein, each
18 and every allegation contained in the preceding paragraphs, as though set forth in
19 full herein.

20
21 53. Upon information and belief, Defendant knew that Plaintiff created and
22 held rights to the Photograph because, *inter alia*, the source of the Photograph that
23 Defendant used to make its infringing copy specifically attributed the Photograph to
24 Plaintiff by watermark or photo credit.
25
26
27
28

1 54. Upon information and belief, in its article on the Website, Defendant
2 copied the Photograph from [https://nypost.com/2020/04/02/cops-arrest-suspect-](https://nypost.com/2020/04/02/cops-arrest-suspect-accused-of-punching-elderly-woman-over-social-distancing/)
3 [accused-of-punching-elderly-woman-over-social-distancing/](https://nypost.com/2020/04/02/cops-arrest-suspect-accused-of-punching-elderly-woman-over-social-distancing/) which contained a
4 photograph credit below the Photograph stating “Helayne Seidman,” the owner and
5 author of the Photograph.
6

7
8 55. A screengrab of the website of first publication including the
9 Photograph is attached as Exhibit 3.
10

11 56. The photograph credit is copyright management information.

12 57. Upon information and belief, Defendant intentionally removed
13 copyright management information related to the Photograph with the intent to
14 induce, enable, facilitate, or conceal an infringement of Plaintiff's rights under the
15 Copyright Act. Specifically, Defendant purposefully failed to include the photo
16 credit originally conveyed with the Photograph in order to mislead the public into
17 believing that Defendant either owned the Photograph or had legitimately licensed
18 it for use in the Infringement.
19
20

21 58. In addition, Defendant displayed the unauthorized copies of the
22 Photograph knowing the copyright management information had been removed.
23

24 59. Defendant's conduct violates 17 U.S.C. § 1202(a) and 1202(b).

25 60. Upon information and belief, Defendant's falsification, removal and/or
26
27
28

1 alteration of the aforementioned copyright management information was made
2 without the knowledge or consent of Plaintiff.

3
4 61. Upon information and belief, the falsification, alteration and/or removal
5 of said copyright management information was made by Defendant intentionally,
6 knowingly and with the intent to induce, enable, facilitate, or conceal their
7 infringement of Plaintiff's copyright in the Photograph. Defendant also knew, or
8 should have known, that such falsification, alteration and/or removal of said
9 copyright management information would induce, enable, facilitate, or conceal their
10 infringement of Plaintiff's copyright in the Photograph.

11
12
13 62. Plaintiff has sustained significant injury and monetary damages as a
14 result of Defendant's wrongful acts as hereinabove alleged, and as a result of being
15 involuntarily associated with Defendant in an amount to be proven.

16
17 63. As a result of Defendant's violations of Title 17 of the U.S. Code,
18 pursuant to 17 U.S.C. § 1203(c)(2), Plaintiff is entitled to an award of the actual
19 damages suffered as a result of the violation including any profits of the Defendant
20 attributable to the violation or, alternatively, Plaintiff may elect to recover from
21 Defendant statutory damages pursuant to 17 U.S.C. § 1203(c)(3) for each violation
22 of 17 U.S.C. § 1202.

23
24
25 64. As a result of the Defendant's violations of Title 17 of the U.S. Code,
26
27
28

1 the court in its discretion may allow the recovery of full costs as well as reasonable
2 attorney's fees and costs pursuant to 17 U.S.C. § 1203(b)(4) and (5) from
3 Defendants.
4

5 **JURY DEMAND**

6 65. Plaintiff hereby demands a trial of this action by jury.
7

8 **PRAYER FOR RELIEF**

9 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

10 That the Court enters a judgment finding that Defendant has infringed on
11 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award
12 damages and monetary relief as follows:
13

- 14 a. finding that Defendant infringed upon Plaintiff's copyright
15 interest in the Photograph by copying and displaying without a
16 license or consent;
17
18 b. for an award of actual damages and disgorgement of all of
19 Defendant's profits attributable to the infringement as provided
20 by 17 U.S.C. § 504 in an amount to be proven or, in the
21 alternative, at Plaintiff's election, an award for statutory damages
22 against the Defendant for the infringement pursuant to 17 U.S.C.
23 § 504(c), whichever is larger;
24
25
26
27
28

- c. for an award of actual damages or, in the alternative, statutory damages against Defendant for the falsification or removal of copyright management information pursuant to 17 U.S.C. § 1202;
- d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- e. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505 and/or 17 U.S.C. §1203(b)(4) and (5);
- f. for pre judgment interest as permitted by law; and
- g. for any other relief the Court deems just and proper.

DATED: January 10, 2023

SANDERS LAW GROUP

By: /s/ Douglas H. Sanders
Douglas H. Sanders, Esq.
333 Earle Ovington Boulevard, Suite 402
Uniondale, NY 11553
Tel: (516) 203-7600
Email: csanders@sanderslaw.group
File No.: 125213

Attorneys for Plaintiff